SUPREME COURT OF THE UNITED STATES.

No. 59.

JOHN MURPHY AND JOHN DARRINGTON, ADMINISTRATORS OF WM. MATHESON, DECEASED, PLAINTIFFS IN ERROR,

vs.

ANGUS STEWART, ADMINISTRATOR OF ALEXANDER GRANT, DECEASED.

IN ERROR TO THE CIRCUIT COURT U. S. FOR SOUTH ALABAMA.

INDEX.

	Original.	Print.
Citation and service	1	2
Writ of error	2	2
Appeal bond	3	3
Writ of capias ad respondendum, and cause of action	4	4
Marshal's return—alias writ, &c.	5	5
Declaration	6	6
Defendant's plea	7	8
Order of court—nonsuit	8	9
Motion and order—Judgment—Motion and order—Affidavit	9	9
Verdict found	10	11
Clerk's certificate	11	11
Deposition of Chapman Levy	12	12
Clerk's certificate	17	16

J. & G. S. Gideon, Printers.

UNITED STATES OF AMERICA.

Circuit Court of the United States for the ninth circuit, and southern district of Alabama—to Angus Stewart.

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington city, on the second Monday of January next, pursuant to a writ of error filed in the clerk's office of the court aforesaid, wherein John Murphy and John Darrington, as administrators of William Mathewson, deceased, are plaintiffs in error, and you are defendant, to show cause, if any you have, or can, why the judgment mentioned in said writ of error mentioned should not be corrected, and speedy justice done to the parties in that behalf.

Witness honorable William Crawford, one of the judges of the Circuit Court of the United States for the circuit aforesaid, this 26th day of January, in the year of our Lord one thousand eight hundred and forty-two.

WM. CRAWFORD.

I accept service of the above writ of citation, this twenty-seventh day of January, eighteen hundred and forty-two.

P. PHILLIPS,
Attorney for Angus Stewart.

UNITED STATES OF AMERICA.

The President of the United States to the judges of the Circuit Court of the United States for the ninth judicial circuit, and southern district of Alabama.

Because in the record and proceedings, as also in the rendition of judgment, in a plea which is in the said circuit court before you, wherein John Darrington and John Murphy, administrators, &c. are plaintiffs, and Angus Stewart, administrator, &c. is defendant in error, a manifest error hath happened to the great damage of the said plaintiffs, as by their complaint appears; and it being fit, if error there be, the same should be corrected, and full and speedy justice be done the parties aforesaid, do command you, if judgment be rendered, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of January next, in the Supreme Court to be then and there held, that the record and proceedings aforesaid, being inspected, the said Supreme Court may cause further proceedings therein to correct the error, what of right according to law, and the custom of the United States, should be done.

Witness the honorable Roger B. Taney, Chief Justice of the Supreme Court of the United States, and the seal of said [L. S.] Circuit Court, this second Monday of January, in the year of our Lord one thousand eight hundred and forty-two.

Issued the twenty-fifth day of January, in the year of our Lord one thousand eight hundred and forty-two.

Attest: DAVID FILES,
Clerk C. C. So. Dist. Alabama.

Know all men by these presents that we, John Darrington, Robert G. Gordon, and John D. Bracey, are held and firmly bound unto Angus Stewart, administrator of Alexander Grant, deceased, in the just and full sum of sixteen thousand five hundred dollars, lawful money of the United States, to be paid to the said Angus Stewart, his certain attorney, executors, administrators, and assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated this 25th day of January, in the year of our Lord one thousand eight hundred and forty-two.

The condition of this obligation is such, that whereas the above bounden John Darrington has sued out a writ of error, returnable to the Supreme Court of the United States on the second Monday of January, in the year of our Lord one thousand eight hundred and forty-three, on a certain judgment recovered against him and one John Murphy, at the November term, A. D. 1840, of the Circuit Court of the United States for the ninth judicial circuit, southern district of Alabama, in a certain action of assumpsit, wherein Angus Stewart was the plaintiff, and the said John Darrington and John Murphy were defendants. Now, if the said John Darrington shall prosecute his said writ of error to effect, or failing therein, shall pay to the said Angus Stewart all costs and damages which he may sustain by the failure of the said John Darrington to sustain his said plea, then the beforegoing obligation to be void, otherwise to be and remain in full force and virtue.

J. DARRINGTON, [L. S.]
R. G. GORDON, [L. S.]
JOHN D. BRACEY, [L. S.]

Signed, sealed, and delivered, in presence of
C. C. SOUTHWORTH.

I, David Files, clerk of the Circuit Court of the United States for the ninth judicial circuit, southern district of Alabama, do hereby certify the above to be a true copy of the original bond on file in my office.

Witness my hand, and the seal of said circuit court, this 26th [L. S.] day of January, A. D. 1842.

DAVID FILES,
Clerk C. C. So. Dist. Alabama.

Pleas had before the honorable the Circuit Court of the United States for the ninth judicial circuit, and southern district of Alabama, at a term thereof begun and held in and for said district, at Mobile, on the fourth Monday of November, in the year of our Lord one thousand eight hundred and forty-one, before his honor John McKinley, presiding judge of said court: Be it remembered, that heretofore, to wit, on the seventh day of March, in the year of our Lord one thousand eight hundred and thirty-eight, Angus Stewart, administrator, &c., sued out of said court his writ of capias ad respondendum, against John Murphy and John Darrington, administrators, &c., in the words and figures following, to wit:

UNITED STATES OF AMERICA.

ANGUS STEWART,
vs.
MURPHY AND DARRINGTON. } 1,525.

Circuit Court of the United States for the ninth judicial circuit, southern district of Alabama—the President of the United States to the marshal of said district, greeting:

You are hereby commanded to take the bodies of John Murphy and John Darrington, administrators, with the will annexed, of William Matheson, deceased, who are citizens of the State of Alabama, and them safely keep, so that you have them before the honorable the circuit court aforesaid, at the place of holding said court, at Mobile, on the second Monday of April next, to answer unto Angus Stewart, a citizen of the State of South Carolina, and administrator of all and singular the goods and chattels, rights, and credits, of Alexander Grant, deceased, who was the survivor of —— McGuffie; said Grant and said McGuffie being merchants and partners, doing business under the name and firm of Grant & McGuffie, and being at the time of their decease citizens of the State of South Carolina, in a plea of trespass on the case in assumpsit, to their damage sixteen thousand dollars. Herein fail not, and have you then and there this writ.

Witness the honorable Roger B. Taney, Chief Justice of the Supreme Court of the United States, and the seal of said circuit court, this second Monday of October, in the year of our Lord one thousand eight hundred and thirty-seven. Issued the 7th day of March, in the year of our Lord one thousand eight hundred and thirty-eight.

Attest: DAVID FILES,
Clerk So. Dist. Alabama.

$3,428 18. 30*th September*, 1818.

Four months after date I promise to pay Grant & McGuffie, or order, three thousand four hundred and twenty-eight dollars eighteen cents, value received.

WM. MATHESON.

Endorsed,
GRANT & McGUFFIE.

Charleston, 25*th February*, 1820.

Due Grant & McGuffie, or bearer, on demand, three hundred and forty-four dollars sixty-six cents, with interest from date.

$344 66. WILLIAM MATHESON.

This action is founded upon above, and upon promises subsequently made, and within two years preceding the death of said Matheson, and also at divers other times; also for goods sold and delivered by plaintiffs to defendant; also for moneys had and received by defendant to plaintiffs use.

WILLIAMS & PHILLIPS.

"Not found."

Whereupon, afterwards, to wit, on the sixth day of July, in the year of our Lord one thousand eight hundred and thirty-eight, the said Angus Stewart sued out of said court his alias writ of capias ad respondendum, against the said John Murphy and John Darrington, in the words and figures following, to wit:

Alias.

UNITED STATES OF AMERICA.

Circuit Court of the United States for the ninth judicial circuit, southern district of Alabama—the President of the United States to the marshal of said district, greeting:

You are hereby commanded, as before, to take the bodies of John Murphy and John Darrington, administrators, with the will annexed, of William Matheson, deceased, who are citizens of the State of Alabama, and them safely keep, so that you have them before the honorable the circuit court aforesaid, at the place of holding said court, at Mobile, on the second Monday of October next, to answer unto Angus Stewart, a citizen of the State of South Carolina, and administrator of all and singular the goods and chattels, rights and credits, of Alexander Grant, deceased, who was survivor of —— McGuffie, said Grant and said McGuffie being merchants and partners, doing business under the name and firm of Grant & McGuffie, and being at the time of their decease citizens of the State of South Carolina, in a plea of trespass on the case, in assumpsit, to their damage sixteen thousand dollars. Herein fail not, and have you then and there this writ.

Witness the honorable Roger B. Taney, Chief Justice of the Supreme Court of the United States, and the seal of said circuit court, this second Monday of April, in the year of our Lord one thousand eight hundred and thirty-eight. Issued the 6th day of July, in the year of our Lord one thousand eight hundred and thirty-eight.

Attest: DAVID FILES,
Clerk So. Dist. Alabama.

$3,428 18. *Charleston, 30th Sept.*, 1818.

Four months after date I promise to pay Grant and McGuffie, or order, three thousand four hundred and twenty-eight dollars eighteen cents, value received.

WM. MATHESON.

Endorsed,
GRANT & McGUFFIE.

Charleston, 25th February, 1820.

Due Grant & McGuffie, or bearer, on demand, three hundred and forty-four dollars sixty-six cents, with interest from date.

$344 66. WILLIAM MATHESON.

This action is founded upon above, and upon promises subsequently made, and within two years preceding the death of said Matheson, and also at divers other times; also for goods sold and delivered by plaintiffs to defendant; and also for money had and received by defendant to plaintiff's use.

WILLIAMS & PHILLIPS.

Received 6th July, 1838, executed 9th August, 1838.
R. S. CRAWFORD, *U. S. M.*
By D. WHITE, *D. M.*

And afterwards, to wit, at a term of the Circuit Court of the United States for the ninth judicial circuit, and southern district of Alabama, begun and held in and for said district, at Mobile, on the second Monday of April, in the year of our Lord one thousand eight hundred and thirty-eight, the plaintiff filed the following declaration, to wit:

Declaration.

Circuit Court United States, for the southern district of Alabama, April term, 1838.

Angus Stewart, who is a citizen of the State of South Carolina, and administrator of all and singular the goods and chattels, rights and credits, of Alexander Grant, deceased, who was survivor of McGuffie, late merchants and partners, trading under the name and firm of Grant and McGuffie, who at the time of their death, and at the time of the execution of the contract herein set forth, were also

citizens of the State of South Carolina, complains of John Murphy and John Darrington, administrators, with the will annexed, of William Matheson, deceased, citizens of the State of Alabama, in custody, and so forth, in a plea of trespass on the case, and so forth; for that, whereas the said William Matheson, in his lifetime, on the 30th day of September, 1818, at Charleston, to wit, in the district aforesaid, made his promissory note in writing, by which he promised to pay said Grant & McGuffie, or order, four months after date thereof, three thousand four hundred and twenty-eight dollars eighteen cents, value received, and then and there delivered said note to said Grant & McGuffie; and also, on 25th February, 1820, said Matheson executed his due bill, or promissory note, at Charleston, to wit, in district aforesaid, by which he promised to pay said Grant & McGuffie, or bearer, on demand, three hundred and forty-four dollars sixty-six cents, with interest from the date of said note, which period has long since elapsed; and being so liable, he the said Matheson, in his lifetime, and the said administrators since his death, promised and assured to pay to plaintiffs the said sums of money, to wit, the sums of $3,428 18 and $344 66, according to the tenor and effect of said notes; yet neither the said Matheson, in his lifetime, nor said administrators since his death, have paid the said sums of money according to their several promises and assumptions, either to said Grant & McGuffie, in their lifetime, or to said administrator since their death, and the tenor and effect of their said notes to the damage of said administrator sixteen thousand dollars. And whereas also, said Angus Stewart complains of said defendants, administrators as aforesaid, in custody, and so forth, for that whereas the said William Matheson, on the 30th September, 1818, at Charleston, to wit, in said district, made his certain promissory note in writing, whereby he promised to pay, four months after date thereof, to one Grant & McGuffie, or order, $3,428 18, and then and there delivered the same to said Grant & McGuffie; and the said Grant & McGuffie, to whose order said note was payable, then and there endorsed and delivered the same to said plaintiff, of all of which said Matheson had due notice; which period has now elapsed: and said Matheson also, on 25th February, 1820, at Charleston, to wit, in the district aforesaid, made his note in writing, whereby he promised to pay to said Grant and McGuffie, or bearer, on demand, $344 66, with interest from date of said note, and then and there delivered the same to said Grant & McGuffie, who then and there delivered the same to said Angus Stewart. And the said note being due and demanded in the lifetime of said Matheson, he was liable to pay the same; and being so liable, the said Matheson, in his lifetime, undertook and promised to pay the same, and his said administrators since his death; but neither did said Matheson in his lifetime, nor have his administrators since his death, paid the said sums of money according to their several promises, and the tenor and effect of said notes, although said Matheson

in his lifetime was, and his said administrators have been since his death, frequently requested so to do, to the damage of said plaintiff sixteen thousand dollars; and therefore he brings suit, and so forth.

WILLIAMS & PHILLIPS,
Plaintiff's attorneys.

And afterwards, to wit, at the same term of said court, the defendants filed their plea, in the words and figures following, to wit:

Plea.

Circuit Court of the United States for the ninth judicial circuit, southern district of Alabama.

And the said defendants, by F. S. Blount, their attorney, come and defend the wrong and injury, when, &c., and say that the said William Matheson, deceased, in his lifetime did not undertake, or promise, in manner and form as the said plaintiff hath above thereof complained against them; and of this they put themselves upon the country, &c. And for further plea in this behalf the said defendants, by their attorney, come and defend the wrong and injury, when, &c., and say that the said plaintiff ought not to have and maintain his aforesaid action thereof against them, because they say that the said William Matheson, deceased, did not in his lifetime, within six years next before the commencement of this suit, undertake, or promise, in manner and form as the said plaintiff hath thereof complained against them, and this the said defendants are ready to verify; wherefore they pray judgment, if the said plaintiff ought to have or maintain his aforesaid action thereof against them.

And for further plea in this behalf, the said defendants, by their attorney, come and defend the wrong and injury, when, &c., and say that the said plaintiff ought not to have and maintain his aforesaid action thereof against him, because they say that the said several supposed causes of action in the said declaration mentioned, did not, nor did any or either of them, accrue to the said plaintiff, at any time within six years before the commencement of this suit, in manner and form as the said plaintiff hath above thereof complained against them, the said defendants. And this they, the said defendants, are ready to verify: wherefore they pray judgment, if the said plaintiff ought to have or maintain his aforesaid judgment thereof against them.

F. S. BLOUNT,
Attorney for Defendants.

And afterwards, to wit, at a term of the Circuit Court of the United States for the ninth judicial circuit, and southern district of Alabama, begun and held in and for said district, at Mobile, on the second Monday of April, in the year of our Lord one thousand eight hundred and thirty-nine, before his honor, William Crawford, judge of said court, the following proceedings were had, to wit:

Order.

On application of plaintiff, it is ordered by the court that this cause be continued.

And afterwards, to wit, at a term of the Circuit Court of the United States for the ninth judicial circuit, and southern district of Alabama, begun and held in and for said district, at Mobile, on the second Monday of March, in the year of our Lord one thousand eight hundred and forty, before his honor John McKinley, presiding judge, and his honor William Crawford, judge of said court, the following proceedings were had, to wit:

Nonsuit.

This day came the parties, by their attorneys—whereupon also came the following jury, to wit:

Wm. H. Chidsey,	J. Howard,
J. B. Ames,	J. Baptiste,
A. L. Coan,	C. H. Dorrance,
C. White,	N. G. Stebbins,
C. E. Harris,	D. Brant, and
D. Jones,	Sidney Smith,

Twelve good and lawful men, who *being* elected, tried, and sworn; whereupon the said plaintiff takes as nonsuit.

Whereupon, it is considered by the court, that the said plaintiff take nothing by his said writ; that the said defendant go hence, and recover his costs.

And afterwards, to wit, at the same term of said court, the following further proceedings were had, to wit:

Motion and Order.

Motion to set aside Nonsuit.

It is ordered by the court, that the nonsuit taken in this cause, at the present term, be set aside, and the cause continued.

And afterwards, to wit, at a term of the Circuit Court of the United States for the ninth judicial circuit and southern district of Alabama, begun and held in and for said district, at Mobile, on the fourth Monday of November, in the year of our Lord one thousand eight hundred and forty-one, before his honor William Crawford, judge of said court, the following proceedings were had, to wit:

Judgment.

This day came the parties, by their attorneys—whereupon also came the following jury, to wit:

Sam'l G. Swift,	C. Smith,
S. Travis,	C. Junelot,
J. Wylie,	T. G. Newbold,
C. Rain,	H. Munroe,
J. W. Hunt,	J. S. Gliddon, and
A. Demony,	Jno. R. Elliott,

Twelve good and lawful men, who, being elected, tried, and sworn, upon their oaths do say: that we, the jury, find for the plaintiff, and assess his damages at eighty-two hundred and fifty dollars. It is therefore considered by the court, that the said Angus Stewart, plaintiff, do recover against the said John Murphy and John Darrington, as administrators of William Matheson, deceased, defendants, the said sum of eighty-two hundred and fifty dollars, the damages aforesaid, in manner aforesaid, by the jurors aforesaid assessed, together with his costs in this behalf expended, to be levied of the goods and chattels, etc., which were of William Matheson, deceased, in their hands to be administered.

And afterwards, to wit, at the same term of said court, the following further proceedings were had, to wit:

Motion and Order.

Motion in arrest of judgment, on the ground of a misjoinder of counts and causes of action in the declaration.

On consideration whereof, it is ordered and adjudged by the court, that said judgment be arrested.

And afterwards, to wit, on the third day of December, in the year of our Lord one thousand eight hundred and forty-one, the following affidavit was filed in said cause, to wit:

Affidavit.

Personally appeared before me P. Phillips, an attorney of this court, who, being duly sworn, says: that on the trial of the cause of Angus Stewart vs. John Murphy and John Darrington, in which a verdict was rendered for the plaintiff at the November term, 1840, of this honorable court, the plaintiff offered the depositions of Chapman Levy, Jacob Axon, and —— McKenzie, and the notes, all of which are now on file; that this was the only evidence offered by plaintiff, and that no evidence was offered by the defendants, and that the cause went to the jury upon the above depositions of the plaintiff alone.

P. PHILLIPS.

Sworn to and subscribed in open court, 3d December, 1841.

DAVID FILES,
C. C. C. S. D. Ala.

And afterwards, to wit, at a term of the Circuit Court of the United States for the ninth judicial circuit and southern district of Alabama, begun and held in and for said district, at Mobile, on the fourth Monday of November, in the year of our Lord one thousand eight hundred and forty-one, before his honor John McKinley, presiding judge of said court; and on the third day of December, in the year of our Lord one thousand eight hundred and forty-one, being a day of said term, the following proceedings were had, to wit:

Verdict found.

This day came the plaintiff, by his attorney, and moves the court upon affidavit filed, to set aside the order of this court, made at November term, 1840, arresting the judgment, and to amend the verdict, so that the same may be applied to the first count in the declaration, and to enter a nolle prosequi upon the other counts, and to enter a judgment nunc pro tunc on the judgment; and it appearing to the court that Messrs. Cuthbert, and Stanley, and R. G. Gordon, Esq., had notice of this motion, and the same having been argued by counsel for the plaintiff and defendants, it is adjudged by the court, that the said order, arresting the judgment aforesaid, be vacated; that judgment nunc pro tunc be entered upon the verdict, applying the same to the first count in the declaration, that is to say:

The plaintiff enters a nolle prosequi on the second and third counts of his declaration; and now this day, that is to say, on the second day of January, in the year of our Lord one thousand eight hundred and forty-one, came the parties, by their attorneys, whereupon, also, came the following jury, to wit:

S. G. Swift,	C. Smith,
S. Travis,	C. Junelot,
J. Wylie,	T. G. Newbold,
C. Rain,	H. Munroe,
J. W. Hunt,	J. S. Gliddon, and
A. Demony,	Jno. R. Elliott,

twelve good and lawful men, who being elected, tried, and sworn, upon their oaths, do say, that we, the jury, find for the plaintiff, upon the first count in his declaration mentioned, and assess his damages at eight thousand two hundred and fifty dollars.

Wherefore, it is considered by the court, that the said Angus Stewart, administrator of Alexander Grant, plaintiff, do recover against the said John Murphy and John Darrington, as administrators of Wm. Matheson, deceased, defendants, the said sum of eighty-two hundred and fifty dollars, the damages aforesaid, in manner aforesaid, by the jurors aforesaid, assessed together with his costs in this behalf expended, to be levied of the goods and chattels, rights and credits, which were of the said Wm. Matheson, deceased, in their hands to be administered.

The plaintiff consents that the time for filing a bond, and suing out a writ of error, on the part of the defendants, should they elect to file and sue out the same, be extended sixty days, and that execution be stayed for the said space of sixty days.

I, David Files, clerk of the Circuit Court of the United States for the 9th judicial circuit, and southern district of Alabama, do hereby certify that the above and beforegoing seven pages, contain a full, true, and perfect exemplification of the record and proceedings in a certain suit, lately pending and determined before said court, where-

in Angus Stewart, administrator of Alexander Grant, was plaintiff, and John Murphy and John Darrington, administrators of Wm. Matheson, deceased, were defendants.

In testimony whereof, at office in the city of Mobile, I have hereunto set my hand, and affixed the seal of said circuit court, [L. S.] this twenty-seventh day of January, in the year of our Lord one thousand eight hundred and forty-two.

DAVID FILES,
Clerk C. C. So. Dist. Ala.

In a certain cause pending in the Circuit Court of the United States for the 9th judicial circuit, in the southern district of Alabama, at Mobile, wherein Angus Stewart, administrator, is plaintiff, and Murphy and Darrington, executors of William Matheson, deceased, are defendants, I, John M. Desaussure, intendant of the town of Camden, in the State of South Carolina, at the instance of the plaintiff in the said suit above entitled, have caused Col. Chapman Levy, who resides in the State of Mississippi, (and is now spending some time in the said town of Camden, more than one hundred miles from Mobile,) to come before me at my law office in the said town of Camden; and the said Chapman Levy, having been by me examined, cautioned, and sworn to testify the whole truth, did depose and say, and doth depose and say, in the following words, to wit: I was acquainted with William Matheson previous to the 14th of November, 1822. My first acquaintance with said Matheson was during his residence in the town of Camden, State of South Carolina, where he carried on a mercantile business. I was also acquainted with Mr. McGuffie, of the firm of Grant & McGuffie, who were said to have a mercantile house in Charleston, South Carolina; he was called Anthony McGuffie. At some period previous to the 15th day of November, 1822, I believe between the 2d day of April, 1821, and the 15th November, 1822, said Anthony McGuffie placed in my hands two notes of hand, purporting to have been drawn by said Wm. Matheson, to said Grant & McGuffie; which said notes of hand remained (with the exception of about two months) in my keeping until the year 1837—I believe in September of 1837; about which time I enclosed them in a letter to P. Phillips, Esq., and mailed said letter. Mr. Phillips has, by letter, dated Oct. 17th, 1837, from Mobile, acknowledged the receipt of said notes. Some time after I received said notes I left them for, I suppose, about two months, in the hands of William McWillie, Esq., my copartner. He returned them to me; and, except the time they were so in his possession, they have been constantly in my keeping from the time I received them of Mr. McGuffie up to the time that I enclosed them by mail to P. Phillips, Esq.

The first of said notes, I believe, bears date Charleston, 30th September, 1818. It purports to be signed by William Matheson, and is for the payment, to Grant & McGuffie, or order, the sum of three

thousand four hundred and twenty-eight dollars and 18 cents, and is payable four months after date. On this note the following credits are endorsed: 31st May, 1819, three hundred dollars; 3d July, 1819, one hundred dollars; 6th October, 1819, ninety-six dollars.

The other note, which is in the due bill form, is dated Charleston, 25th February, 1820. This latter note, or due bill, also purports to be signed by William Matheson, and is for the payment of three hundred and forty-four dollars and sixty-six cents, to Grant & McGuffie, or bearer, on demand, with interest from the date.

I made a memorandum of said notes, when I enclosed them to P. Phillips, Esq., and recurred to it to aid my recollection, and believe the description I have given of said notes is accurate. If I have erred, the original, in Mr. Phillips' hands, will correct the error. One of said notes, I believe the last described, and which is in the due bill form, was accompanied with a paper purporting to be a protest. I took no memorandum of that protest when I enclosed the notes to Mr. Phillips. My belief is, that it is attached to the last described note, and was enclosed with it to Mr. Phillips. Whether the person whose name is signed officially to the protest was an officer duly authorized for that purpose, I am unable to say. Mr. McGuffie also placed in my hands, at or about the time he did the notes, or sometime after, an account, or account current, exhibiting a balance of ninety-nine dollars and fifty cents, in favor of Grant & McGuffie, against William Matheson, over and above and independent of the amounts due on the said notes.

At the time Anthony McGuffie placed the notes before described, and the account current, in my hands, his understanding of William Matheson's affairs, as expressed to me, was, that he had no visible property which could be reached by his creditors, by ordinary process of law. Such was also my understanding of William Matheson's affairs, and such, I believe, was the current opinion. At that time he was absent, and could not be found, to be acted on by personal service of legal process. The instructions I therefore received, when said notes were placed in my hands, were, that in case I could make any discovery of a fraudulent concealment of funds, or property, of Matheson's, in the hands of other persons, I should file a bill in equity against such persons and said Matheson; and to that end I was requested to make diligent inquiry, and endeavor, if possible, to procure information on which I could be satisfied a suit in equity could be predicated and sustained. The fee I received was for a proceeding in equity. I could not, after the most diligent inquiry, arrive at any information on which to base a proceeding in equity. It was soon ascertained that we had nothing to expect from any such judicial proceeding, and I believe Mr. McGuffie was made aware of it.

I do not remember that I had any further inquiries made by Mr. McGuffie, or any other person for him, until about the winter of 1828 or 1829, a gentleman inquired of me, in Columbia, if I had

succeeded in obtaining payment of William Matheson, on Grant & McGuffie's demand against him. I believe I was then informed of the death of one, or both, Grant & McGuffie—which of them, or whether both of them, I cannot now remember.

There has been a conviction on my mind, connected with this claim, that in a conversation with William Matheson, in South Carolina, he declared, in unqualified language, his obligations to Grant & McGuffie, for the aid he received from them in his Camden business, through the friendly disposition manifested to him by Mr. McGuffie, and that, if ever he became able, he would satisfy their claims against him. From the lapse of time, and from the long period in which no demand was made on my mind or memory to recur to the early details of this transaction, I find it impossible to remember when and on what occasion, in South Carolina, I heard those observations. I remember that he was once in my office at Camden; it must have been before he went off from there; but on what business he was in my office I cannot remember. I never recollect to have seen him but the one time in my office, and have no distinct recollection of our conversation on that occasion. If he made the observations there, it must have been incidentally done by him. I saw him after he had left Camden, and had left his creditors in the lurch. My business compelled me often to pass between Camden and Columbia—I believed sometimes from two to three times in the month. On one of those trips I met him on the road which passes from Columbia to Camden, and is the same road which passed from Columbia to the residence of Mr. James English, who lived on the west side of the Waterloo river, about 8 miles from Camden, down the river. I understood that William Matheson's wife went to James English's after he had left Camden—Mrs. English being her sister. The names of Mrs. English and Mrs. Matheson, before marriage, was Darrington. The meeting was a surprise to me, and unexpected. We had a conversation in the road, although I would not venture positively to affirm that I there had the conversation in relation to the claims of Grant & McGuffie; yet I cannot doubt that it was on that occasion. I do not believe that William Matheson, on this visit to the State, showed himself in Camden; and I do not remember to have seen him again until I met him at the law office of Phillips & Williams, in Mobile—one or both of those gentlemen being present. I believe that it was in the year 1836, I met William Matheson, in Mobile, and I think in the month of February, March, or April, of that year. He greeted me respectfully, and recognised our being acquainted in Camden, South Carolina. As soon as I saw him the claims of Grant & McGuffie against him recurred to me, and simultaneously, and connected with it, the impression that I before stated, as existing, that he had made the declaration in relation to it before mentioned. I determined that his attention should be called to it on the first proper occasion. We met in the law office of Phillips & Williams almost daily during my

stay in Mobile, and sometimes in the street. Messrs. Phillips & Williams were my intimate acquaintances in South Carolina, and I spent very much of my leisure hours in their office; and what little writing I had to do was done in their office. William Matheson appeared to be a very frequent visitor there. Whenever, at such meetings, our intercourse was uninterrupted by others, the burden of the conversation, pressed on me by William Matheson, was the unpleasant litigation there existed between him and his wife. It appeared to be an absorbing subject with him, and intensely to engage his thoughts. In pressing this subject on me, he seemed desirous to place himself in the most favorable attitude in relation to the affair, and to impress me with the belief that his course had been honorable and upright. As it was a family affair I did not care to hear his complaints, and made no replies that I conceived would invite a continuation of the subject. I at length took occasion to call his attention to the claims of Grant & McGuffie against him. I told him I had the notes of that firm against him yet in my possession. I stated to him, that if I was not mistaken, I had heard him express the highest gratitude to those gentlemen for the assistance they had rendered him in his business, and declare that he would pay the demands if ever he became able. He replied that it was likely he had made such observations. He did not deny it. He said he could not forget the kindness of Mr. McGuffie, and the assistance he had received from that firm, through him. He asked where the notes were. I replied, they were in South Carolina, locked up with my valuable private papers. He then said, as the notes were not present, he could do nothing. I told him I would be in South Carolina in a few months, and would return to Mississippi the next fall, and would bring the notes with me, in expectation some time to meet him again; that, from his own declarations, he was bound, not only in justice, but by every sentiment of honor, to pay the demand. He replied, that whenever the notes were presented to him, he would make a satisfactory arrangement. He then said that payment of the principal ought to be received as satisfactory, and I wish you so to advise the claimants.

That is the import of the conversation; I have come as near to the words of it as my memory will permit.

My reflections on the conversation were the more strongly called into action from the fact, that I supposed William Matheson's honest purpose had been determined on and expressed to pay up the notes, principal and interest, when he said, that whenever the notes were presented to him he would make a satisfactory arrangement, when by the introduction of the after sentence, I was left in doubt what position he intended to assume as to the interest due on the notes, as he had postponed all action on the subject until the notes should be presented. I did not feel authorized to urge the subject further. I do not know that the account was ever referred to between us. In the conversation at Mobile, I did not remember it. The next infor-